



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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*86 Chambers Street  
New York, New York 10007*

February 26, 2021

**BY ECF**

Honorable Lewis A. Kaplan  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

Re: *MAZON: A Jewish Response to Hunger, et al., v. U.S. Dep't of Health and Human Services, et al.*, 21 Civ. 475 (LAK)

Dear Judge Kaplan:

This Office represents the defendant federal agencies (together, the “government”) in the above-captioned action under the Administrative Procedure Act. In advance of the conference scheduled for March 2, 2021 at 10:30 am, and with plaintiffs’ consent, I write respectfully to request an approximately three-week adjournment of the conference and certain other dates to permit the administration review the issues raised in this litigation. Specifically, the parties respectfully request: (1) that the parties be relieved of their obligation to propose a Rule 16 scheduling order pursuant to the Court’s February 8, 2021 order, ECF No. 53; (2) an adjournment of the March 2 initial conference to a date convenient to the Court following March 23, 2021; (3) that the parties file a joint status update by Friday, March 19, 2021, outlining proposed next steps in the litigation, including a proposed schedule; and (4) an adjournment of the government’s time to answer or otherwise respond to the complaint, which is currently March 26, 2021, until April 16, 2021. This is the government’s first request to adjourn these dates.

This is an APA action challenging a multi-agency final rule, Equal Participation of Faith-Based Organizations in the Federal Agencies’ Programs and Activities, 85 Fed. Reg. 82,037 (Dec. 17, 2020) (the “2020 Rule”), which became effective on January 19, 2021. The 2020 Rule concerns nine agencies, eight of which are defendants here.

With the recent change in presidential administration, the government requires additional time to examine the issues raised in this litigation. Moreover, because this is an APA case, judicial review is generally confined to the administrative record that was “before the agency” at the time of the administrative decision at issue. *See Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971); *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2573 (2019); *accord* 5 U.S.C. § 706. The parties therefore do not expect a discovery schedule will be necessary—instead, the case will likely be resolved by dispositive motions.<sup>1</sup> Indeed, Local Civil

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<sup>1</sup> Plaintiffs have reserved, and do not waive, any rights to seek discovery.

Honorable Lewis A. Kaplan  
February 26, 2021

Page 2

Rule 16.1 exempts “reviews from administrative agencies” from the mandatory scheduling order otherwise required by Federal Rule of Civil Procedure 16. Thus, we respectfully propose that the parties file a proposed schedule that will incorporate relevant deadlines that are appropriate to an APA case.

Thus, in order to allow time for the administration to review the 2020 Rule, and for the parties to then propose a schedule appropriate to an APA case, we respectfully request as follows:

- the parties be relieved of their obligation to propose a scheduling order pursuant to the Court’s February 8, 2021 order, ECF No. 53;
- the initial conference, currently set for March 2, 2021, at 10:30 am, be adjourned to a date convenient to the Court on or after March 23, 2021;<sup>2</sup>
- the parties will file a joint status update by Friday, March 19, 2021, which—if the parties do not agree that a further extension is warranted—will also include a proposed schedule for relevant events in the litigation; and
- the government’s time to answer or otherwise respond to the complaint, which is currently due March 26, 2021, be adjourned to April 16, 2021.

We thank the Court for its attention to this matter.

Respectfully submitted,

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<sup>2</sup> I was previously scheduled to appear before the Honorable Mary Kay Vyskocil in another matter at 11:00 am on March 2, 2021, half an hour after the conference scheduled in this matter. In the event the Court declines to adopt the parties’ proposal in this letter, I respectfully request—with plaintiffs’ consent—that the March 2 conference be rescheduled to another time on the same date, or another date convenient to the Court, to avoid any scheduling conflict.